

1 Gregory M. Haynes, Esq.
2 SBN: 111574
3 2443 Fillmore, #194
4 San Francisco, CA 94115
5 (415) 546-0777

6 Attorney for Plaintiffs
7 Telitha Ball, et. al.

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 Telitha Ball, et. al.,
11 Plaintiffs

12 Action No. 08-02831-MHP

13 Notice of Motion for Order
14 Remanding the Case to
15 State Court and for an
16 Order for payment of Costs
And attorney fees

17 City and County of
18 San Francisco, et al.
19 Defendants

DATE: Aug 11, 2008
TIME: 2:00p.m.
PLACE: Courtroom 15
Judge:
Hon. Marilyn H. Patel

20
21
22 _____/
23
24 Notice is hereby given that plaintiffs herein will
25 move this court on Aug 11, 2008 at 2:00p.m. in
26 Courtroom 15 for an order remanding the above matter to
27 state court. Plaintiffs will also seek an order
28

1 requiring defendants City and County of San Francisco
2 to pay costs and attorney fees.

3 The motion will be made on the basis that the
4 notice of removal is defective. 28 U.S.C. 1446, 28
5 U.S.C. 1447.

6 The motion will be based on the points and
7 authorities filed herewith, the declaration of Gregory
8 M. Haynes, the file herein and on such other
9 information as may be development at the hearing
10 herein.

11
12 **Memorandum of Points and Authorities**

13 I

14
15 THE COURT SHOULD REMAND THE MATTER TO
16 STATE COURT BECAUE THE REMOVAL IS
17 PROCEDURALLY DEFECTIVE

18 This is a motion to remand this matter to state court
19 as a result of a procedurally defective removal.

20 On June 6, 2008, Defendants City and County of San
21 Francisco and Police Chief Heather Fong, in her
22 official capacity, removed this matter to federal court
23 from state court.

24 On May 19, 2008, defendant Earnest Ferrando was
25 served with First Amended Complaint and summons in this
26 matter.

27 The notice of removal does not explain why all the
28 defendants in the matter have not jointed in the
removal.

1 A notice of removal that does not explain why
2 all the defendants have not joined in the removal is
3 defective. Prize Frize, Inc. v. Matrix (U.S.) Inc. (9th
4 Cir 1999) 167 F3d 1261, 1266.

5 All defendants who have been served prior to the
6 removal must join in the removal. Parrino v. FHP, Inc
7 (9th Cir 1998) 146 F3d 699.

8
9 Defendant Earnerst Ferrando did not join the
10 removal within 30 dasy of May 19, 2008, and, in fact,
11 has still not joined in the removal.

12 Since all defendants who have been served with the
13 summons and first amended complaint in the state court
14 action did not joint the removal (Parrino v. FHP, Inc
15 (9th Cir 1998) 146 F3d 699) and because the notice of
16 removal does not explain why all the defendants have
17 not joined in the removal (Prize Frize, Inc. v. Matrix
18 (U.S.) Inc. (9th Cir 1999) 167 F3d 1261, 1266), the
19 removal from state court was procedural defective.

20 A motion to remand must be filed within 30 days
21 after the filing of the notice of removal. 28 U.S.C.
22 1447 (c).

23 Accordingly, as this motion is made within 30 days
24 of the filing of the notice of removal and the removal
25 is defective, this court must remand the matter to
26 state court. 28 U.S.C. 1447 (c). (Prize Frize, Inc. v.
27 Matrix In (9th Cir 1999) 167 F3d 1261, 1266)
28

1
2 THE COURT ORDER THE PAYMENT
3 OF COSTS AND ATTORNEY FEES
4

5 When a matter is remanded to state court, the
6 remand order may require the payment of just costs and
7 expenses, including attorney fees, incurred as a result
8 of the removal. 28 U.S.C. 1447 (c).

9 In the current matter, the notice of removal is
10 clearly defective. There is no explanation as to why
11 all defendants have not joined the motion. Indeed, even
12 after advising defense counsel of the defect, the
13 defect was not cured. Further, this motion is
14 necessary as the defense counsel would not agreed to
15 waive time to file a motion to remand, failed to agree
16 upon an stipulation and appears to be planning to file
17 yet another notice of removal.

18 According, plaintiffs request costs and attorney
19 fees in the amount of \$2400.00 as set forth in the
20 declaration of Gregory M. Haynes, which have been
21 incurred as a result of the improper removal.

22 CONCLUSION
23

24 Since the removal is procedurally defective, this
25 court should order the matter remanded to state court
26 and require payment of the costs incurred as a result
27 of the removal.
28

1 DATED:

2 _____
3 Gregory M. Haynes
4 Attorney for Plaintiffs
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28